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THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA d/b/a UCSF MEDICAL CENTER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JANE DOE, individually and on behalf of all others similarly situated,

Case No.: 3:23-cv-00598-WHO

Plaintiff,

V.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA d/b/a UCSF MEDICAL
CENTER,

**DEFENDANT THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA'S
NOTICE OF MOTION AND MOTION
TO STRIKE PUNITIVE DAMAGES**

*[Filed Concurrently with (Proposed) Order
on Motion to Strike]*

Date: March 29, 2023
Time: 2:00 p.m.
Location: Ctrm 2, 17th Floor

Action Filed: 07/25/2022
Am. Action Filed: 01/05/2023

1 **TO THE HONORABLE COURT, AND TO PLAINTIFF AND HER COUNSEL OF**
 2 **RECORD HEREIN:**

3 **NOTICE IS HEREBY GIVEN** that on March 29, 2023, at 2:00 p.m., in Courtroom 2, 17th
 4 floor of the above-entitled Court located at 450 Golden Gate Avenue, San Francisco, CA 94102,
 5 Defendant THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (“Defendant”) will and
 6 hereby does move the Court to strike portions of Plaintiff’s Complaint pursuant to Fed. R. Civ. P.
 7 12(f) and California Gov. Code § 818 on the ground that Plaintiff seeks damages not recoverable
 8 as a matter of law, as more fully argued below, in Defendant’s further papers filed in support of
 9 this motion, and at the hearing hereon.

10 Defendant moves the Court to strike the following portions of Plaintiff’s Complaint:

- 11 1. Paragraph 113, “Plaintiff and Class members seek statutory damages in accordance
 with Cal. Penal Code § 637.2(a), which provides for the greater of: (1) \$5,000 per
 violation; or (2) three times the amount of damages sustained by Plaintiff and the
 Class in an amount to be proven at trial....”
- 12 2. Paragraph 131, “Plaintiff and Class members are also entitled to punitive damages
 resulting from the malicious, willful, and intentional nature of UC Regents’ actions,
 directed at injuring Plaintiff and Class members in conscious disregard of their
 rights. Such damages are needed to deter UC Regents from engaging in such
 conduct in the future.”
- 13 3. Paragraph 143, “Plaintiff and Class members seek appropriate relief for that injury,
 including but not limited to damages that will reasonably compensate Plaintiff and
 Class members for the harm to their privacy interests....”
- 14 4. Paragraph 144, “Plaintiff and Class members are also entitled to punitive damages
 resulting from the malicious, willful, and intentional nature of UC Regents’ actions,
 directed at injuring Plaintiff and Class members in conscious disregard of their
 rights. Such damages are needed to deter UC Regents from engaging in such
 conduct in the future.”

5. Paragraph 154, “(1) nominal damages of \$1,000 per violation ... (3) statutory damages pursuant to Civil Code § 56.36(c)”.
 6. Paragraph 161, “(1) nominal damages of \$1,000 per violation ... (3) statutory damages pursuant to Civil Code § 56.36(c)”.
 7. Paragraph 167, “(1) nominal damages of \$1,000 per violation ... (3) statutory damages pursuant to Civil Code § 56.36(c); (4) punitive damages pursuant to Civil Code § 56.35”.
 8. Prayer for Relief, “and punitive damages where applicable”.

Dated: February 21, 2023

BAKER & HOSTETLER LLP

By: /s/Teresa C. Chow
TERESA C. CHOW

Attorneys for Defendant
THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA d/b/a UCSF MEDICAL CENTER

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 In her suit against the University of California Regents (the “Regents”), Plaintiff Jane Doe
 4 (“Plaintiff”) improperly requests punitive damages against a public entity in contravention of
 5 California Gov. Code § 818 and binding case law, which expressly provide that punitive damages
 6 are not available against public entities. The policy behind the statute is clear because imposing
 7 such damages comes with significant costs: “[P]unitive damage awards against a municipality are
 8 against sound public policy” and ““burden the very taxpayers and citizens for whose benefit the
 9 wrongdoer has been chastised.”” *Pearl v. City of Los Angeles*, 36 Cal. App. 5th 475, 486 (2019)
 10 (quoting *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 263 (1981)). Indeed, punitive damages
 11 generally serve only two goals—“retribution and deterrence,” and certainly not compensation for
 12 actual damages. *X.M. v. Super. Ct.*, 68 Cal. App. 5th 1014, 1022-23 (2021). Allowing recovery
 13 from public entities of damages “over and above the amount necessary to compensate the injured
 14 party” serves only to bestow an unfair “windfall to a fully compensated plaintiff.” *Id.* With this in
 15 mind, the Court should strike each of Plaintiff’s improper damages requests, as explained below.

16 *First*, Plaintiff expressly seeks punitive damages against the Regents for alleged privacy
 17 violations under (a) California’s Constitution; (b) her invasion of privacy - intrusion upon seclusion
 18 claim; and (c) Section 56.10 of the California Confidentiality of Medical Information Act
 19 (“CMIA”). Those requests—which facially contravene Gov. Code § 818—should be stricken as a
 20 matter of law.

21 *Second*, Plaintiff also seeks to recover statutory damages under the California Invasion of
 22 Privacy Act, Cal. Pen. Code § 631 (“CIPA”), seeking the greater of “\$5,000 per violation” or treble
 23 damages against the Regents under this criminal statute. Because such damages go well beyond
 24 what is necessary to compensate the plaintiff, they are punitive and should be stricken as to the
 25 Regents under Gov’t Code § 818.

26 *Third*, Plaintiff seeks to recover statutory damages under the CMIA, seeking “nominal
 27 damages of \$1,000” for each alleged violation of Sections 56.06, 56.101, and 56.10. *See* Ex. A at
 28 ¶¶ 154, 161, 167. Given the allegations in her complaint, Plaintiff wants the Regents to pay

1 thousands or even hundreds of thousands of dollars (UCSF Health¹ has more than 2.5 million
 2 patients and the putative class definition is not even limited to patients, but rather extends to anyone
 3 in the country that used UCSF Health’s website). Under prevailing case law, such damages are
 4 penal—not compensatory, and would only hurt the California taxpayer. *See, e.g., Pearl*, 36 Cal.
 5 App. 5th at 486. Given the Regents’ public entity status, these damages requests should be stricken.

6 Finally, Plaintiff’s request for damages for an alleged invasion of privacy under the
 7 California Constitution fails because California’s Constitution does not afford a right to damages.

8 The Regents respectfully urge the Court to grant this motion to strike.

9 **II. BACKGROUND²**

10 Defendant Regents is a nonprofit public entity that operates the UCSF Health healthcare
 11 system. *See Dkt. 1; Ex. A at ¶ 1.* Plaintiff has brought nine claims against the Regents: (1) violation
 12 of CIPA; (2) violation of Section 56.10 of the CMIA; (3) violation of Section 56.06 of the CMIA;
 13 (4) violation of Section 56.101 of the CMIA; (5) invasion of privacy – intrusion upon seclusion;
 14 (6) violation of California Constitution, Article I, Section 1; (7) breach of contract; (8) breach of
 15 implied contract; and (9) unjust enrichment. *See id. at ¶¶ 103-189.*

16 Plaintiff generally alleges that, through the use of the Meta Pixel, the Regents discloses
 17 patients’ “sensitive health information” to Meta when patients use the UCSF Health website and
 18 use the patient portal. *See, e.g., Ex. A at ¶ 7.* Plaintiff alleges the Regents embedded the Meta Pixel
 19 on the UCSF Health website and portal. *Id. at ¶¶ 7-8, 111, 152.*

20 Plaintiff broadly seeks “punitive damages where applicable” against the Regents. *See Ex.*
 21 *A at 34; Prayer for Relief (c).* Plaintiff also specifically requests punitive damages for alleged
 22 violations of (a) California’s Constitution; (b) invasion of privacy - intrusion upon seclusion; and
 23 (c) Section 56.10 of the CMIA. *Id. at ¶¶ 131, 144, 167.*

24

25

26

27 ¹ UCSF Health is operated and managed by the the Regents. *See Compl. ¶1.*

28 ² Here the Regents only provide background pertinent to this motion. More comprehensive
 background information is provided in the concurrently-filed motion to dismiss.

1 Plaintiff also requests CIPA statutory damages of “\$5,000 per violation” or treble damages
 2 (whichever is “greater”),³ and “damages” broadly for alleged violations of California’s
 3 Constitution. *See Ex. A at ¶¶ 113, 143.*

4 Plaintiff also requests “nominal damages of \$1,000 per violation” of Sections 56.06, 56.101,
 5 and 56.10 of the CMIA. *See Ex. A at ¶¶ 154, 161, 167.* She also requests “statutory damages
 6 pursuant to Civil Code § 56.36(c)” for each alleged violation of Sections 56.06, 56.101, and 56.10.
 7 *Id.*

8 III. LEGAL ARGUMENT

9 A. APPLICABLE LEGAL STANDARDS UNDER FED. R. CIV. P. 12(F).

10 Fed. R. Civ. P. Rule 12(f) empowers the Court to “order stricken from any pleading ... any
 11 redundant, immaterial, impertinent, or scandalous matter.”⁴ Matter is “immaterial” if it has no
 12 essential or important relationship to the claim for relief or defenses pleaded. *Fantasy, Inc. v.*
 13 *Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev’d on other grounds*, 510 U.S. 517 (1994).
 14 Allegations are “impertinent” if neither responsive nor relevant to the issues involved in the action
 15 and they could not be put in issue or given in evidence between the parties. *Gilbert v. Eli Lilly &*
 16 *Co., Inc.*, 56 F.R.D. 116, 120 n. 6 (D.P.R. 1972). Matters may also be stricken by a court to reduce
 17 trial complication and “to avoid the expenditure of time and money that must arise from litigating
 18 spurious issues by dispensing with those issues prior to trial.” *Sidney-Vinstein v. A.H. Robins Co.*,
 19 697 F.2d 880, 885 (9th Cir. 1983). Further, “[u]nder Rule 12(f), courts have authority to strike a
 20 prayer for relief seeking damages that are not recoverable as a matter of law.” *Jacobsen v. Katzer*,
 21 609 F.Supp.2d 925, 935 (N.D. Cal. 2009). *See also Wells v. Bd. of Trustees of Cal. State Univ.*, 393
 22 F.Supp.2d 990, 994 (N.D. Cal. 2005) (same); *Tapley v. Lockwood Green Eng’rs*, 502 F.2d 559,
 23 560 (8th Cir. 1974) (same).

24
 25 ³ Cal. Penal Code § 637.2 allows “for the greater of the following amounts: (1) Five thousand dollars (\$5,000) per violation,” or “[t]hree times the amount of actual damages, if any, sustained by the plaintiff.” As the Regents’ motion to dismiss illustrates, Plaintiff has not alleged facts showing how she has been harmed. Plaintiff will surely seek to recover “\$5,000 per violation.”

26
 27 ⁴ Some courts have construed motions to strike punitive damages as motions for judgment on the pleadings. *See, e.g., Lopez v. Cnty. of Tulare*, No. CV-F-11-1547-LJO-BAM, 2012 WL 33244, at *12 (E.D. Cal. Jan. 6, 2012).

1 **B. PLAINTIFF'S EXPRESS REQUESTS FOR PUNITIVE DAMAGES FAIL
2 BECAUSE PUBLIC ENTITIES LIKE THE REGENTS CANNOT BE
3 HELD LIABLE FOR THEM.**

4 As noted, Plaintiff expressly requests punitive damages “**where** applicable” and for alleged
5 privacy violations under (a) California’s Constitution (Ex. A at ¶ 131), (b) Section 56.10 of the
6 CMIA (*id.* at ¶ 144), as well as her intrusion upon seclusion claim (*id.* at ¶ 167). Those requests
7 should be stricken because the Regents is a public entity that cannot be held liable for punitive
damages under Cal. Gov. Code § 818.

8 In relevant part, Cal. Gov. Code. § 818 states: “a public entity is not liable for . . . damages
9 imposed primarily for the sake of example and by way of punishing the defendant.” After all,
10 “punitive damage awards against a municipality are against sound public policy” and ““burden the
11 very taxpayers and citizens for whose benefit the wrongdoer has been chastised.”” *Pearl*, 36 Cal.
12 App. 5th at 486 (quoting *Newport*, 453 U.S. at 263). Stated differently, punitive damages “are in
13 effect a windfall to a fully compensated plaintiff, and are likely accompanied by an increase in
14 taxes or a reduction of public services for the citizens footing the bill. Neither reason nor justice
15 suggests that such retribution should be visited upon the shoulders of blameless or unknowing
16 taxpayers.” *X.M. v. Super. Ct.*, 68 Cal. App. 5th 1014, 1022 (2021).

17 Cal. Gov. Code § 811.2 expressly defines a ‘public entity’ to include “the Regents of the
18 University of California, the Trustees of the California State University and the California State
19 University. . . .” California courts, including this Northern District, have thus routinely held that
20 the Regents is a public entity and therefore immune from punitive damages under Cal. Gov. Code.
21 § 818. *See Miklosy v. Regents of Univ. of Cal.*, 44 Cal. 4th 876, 889 (2008) (describing the Regent’s
22 “unique constitutional status” as a body established by the California Constitution “as a ‘public
23 trust . . . with full powers of organization and government.’” (quoting Cal. Const., art. IX, § 9(a))).

24 Accordingly, as a public entity under Cal. Gov. Code § 811.2, the Regents cannot be held
25 liable for punitive damages as a matter of law pursuant to Cal. Gov. Code. § 818. The Court should
26 therefore strike Plaintiff’s express requests for punitive damages against the Regents.

1 **C. THE COURT SHOULD STRIKE THE STATUTORY AND TREBLE
2 DAMAGES PLAINTIFF SEEKS UNDER CALIFORNIA PENAL CODE
§ 631 BECAUSE THEY ARE PUNITIVE—NOT COMPENSATORY.**

3 Cal. Penal Code § 637.2(a) allows “for the greater of the following amounts: (1) Five
4 thousand dollars (\$5,000) per violation,” or “(2) Three times the amount of actual damages, if any,
5 sustained by the plaintiff.” A plaintiff can recover these amounts even if they have not suffered any
6 “actual damages.” Cal. Penal Code § 637.2(c). Under prevailing case law, such additional damages
7 are non-compensatory and therefore punitive and barred by Cal. Gov’t Code § 818.

8 For public entities like the Regents, the California Supreme Court has made clear that
9 plaintiffs cannot circumvent Cal. Gov’t Code § 818 by requesting damages that are even “partially
10 penal [in] nature.” *See Dubois v. Workers’ Comp. Appeals Bd.*, 5 Cal. 4th 382, 397-99 (1993)
11 (holding that such damages requests are not recoverable against public entities). That means a
12 plaintiff cannot recover any damages against a public entity that goes ““beyond those [legal
13 judgment amounts] strictly necessary to recompense the injured party.”” *See X.M.*, 68 Cal. App.
14 5th at 1022 (quoting *Wells v. One2One Learning Found.*, 39 Cal. 4th 1164, 1196 n.20 (2006))
15 (emphasis added). Stated differently, Section 818 “limit[s] exposure to actual compensatory
16 damages,” and to the extent damages are “in addition to actual damages and beyond the equivalent
17 of harm done,” that non-compensatory coverage is necessarily “punitive,” and thus nonrecoverable
18 from a public entity. *See K.M. v. Grossmont Union High Sch. Dist.*, 84 Cal. App. 5th 717, 742-43
19 (2022). In short, anything more than compensatory is punitive and therefore barred as to public
20 entities under Cal. Gov’t Code § 818.

21 Whether or not the requested damages are labeled “punitive” is not dispositive—courts look
22 to the actual function of the damages. *See, e.g., K.M.*, 84 Cal. App. 5th at 742-50 (disallowing
23 statutory damages against a public entity for lack of a “compensatory purpose”). In fact, California
24 courts have routinely disallowed statutory damages that are punitive function yet not expressly
25 labeled “punitive” in the statute. *See, e.g., id.; DuBois*, 5 Cal. 4th at 397-99 (holding that Section
26 818 prevents a plaintiff from recovering statutory damages under Cal. Labor Code § 5814 against
27 a public entity); *X.M.*, 68 Cal. App. 5th at 1029-31 (striking statutory damages under Cal. Code
28 Civ. Proc. § 340.1 and Assembly Bill 218 against a public entity).

On that note, courts have explained that statutory damages under CIPA serve to punish the defendant. *See Friddle v. Epstein*, 16 Cal. App. 4th 1649, 1660 (1993) (“Section 637.2 is fairly read as establishing that no violation of the privacy act is to go unpunished.”). The Central District of California has similarly described the statutory damages available under the CIPA as a “penalty.” *Medeiros v. HSBC Card Servs.*, No. CV 15-9093 JVS, 2017 WL 11632870, at *5 (C.D. Cal. Oct. 23, 2017); *see also Romero v. Securus Techs.*, 331 F.R.D. 391, 411 (S.D. Cal. Nov. 21, 2018) (same); *see also Osgood v. Main Street Mktg., LLC*, No. 16CV2415 GPC BGS, 2018 WL 11408586, at *4 (S.D. Cal. Aug. 20, 2018) (describing CIPA § 637.2(a) as a “penalty provision.”).

After all, CIPA allows for potential statutory penalties of \$5,000 “per violation.” *See* Cal. Penal Code § 637.2(a)(1) (emphasis added). The CIPA also lives in the California *Penal Code* (Cal. Penal Code § 631), the primary set of statutes that define *criminal* offenses and *criminal* procedures under state law. *See* Cal. Penal Code § 1 (the Penal Code consists of four parts, “of crimes and punishments,” “of criminal procedure,” “of state prison and county jails,” and “of prevention of crimes and apprehension of criminals”). Section 631 may be found within “Part 1. Of Crimes and Punishments,” and more specifically “Title 15. Miscellaneous Crimes.” The penalty provision of the statute even specifies: “It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.” Cal. Penal Code § 637.2(c). With all of this in mind, the “statutory penalty” of \$5,000 “per violation” in Cal. Penal Code § 637.2(a)(1) is at least “partially penal” and therefore barred against the Regents under Cal. Gov’t Code § 818. *Dubois*, 5 Cal. 4th at 398; *Osgood*, 2018 WL 11408586 at *4; *Friddle*, 16 Cal. App. 4th at 1660.

Cal. Penal Code § 637.2(a)(1)-(2) also only allows a plaintiff to recover the aggregate of \$5,000 “per violation” if that amount is “greater” than “[t]hree times the amount of actual damages, if any, sustained by the plaintiff” (*i.e.*, treble damages). In other words, under either subsection (a)(1) or (a)(2), defendants would be required to pay more than what is necessary to fully compensate them for their injury.

As for treble damages themselves, they are “punitive in nature.” *Imperial Merchant Services, Inc. v. Hunt*, 47 Cal.4th 381, 394 (2009). *See also Circle Oaks Sales Co. v. Smith*, 16

1 Cal.App.3d 682, 684-685 (1971) (“[A] treble damages award is punitive in nature, imposed as
 2 punishment against the defendant, rather than compensation to the plaintiff.”). As the Supreme
 3 Court further explained: “The very idea of treble damages reveals an intent to punish past, and to
 4 deter future, unlawful conduct, not to ameliorate the liability of wrongdoers.” *Texas Indus., Inc. v.*
 5 *Radcliff Materials, Inc.*, 451 U.S. 630, 639 (1981); *see also Vermont Agency of Nat. Resources v.*
 6 *U.S. ex rel. Stevens*, 529 U.S. 765, 784 (2000) (holding that a state could not be considered a
 7 “person” subject to the amended False Claims Act because the new treble damages provision was
 8 “essentially punitive”).

9 Accordingly, California courts have consistently held that similar treble damages provisions
 10 are punitive, not compensatory. *See, e.g.*, *K.M.*, at 742-50 (disallowing treble damages against
 11 public entity under Cal. Civ. Proc. § 340.1 and statute addressing childhood sexual abuse); *X.M.*,
 12 68 Cal. App. 5th at 1029-31 (same)⁵; *see also Los Angeles Unified Sch. Dist. v. Super. Ct.*, 64 Cal.
 13 App. 5th 549, 558 (2021) (same).⁶ The Court should therefore strike the treble damages Plaintiff
 14 requests in the alternative.

15 Under *Dubois*, *Medeiros*, and related authorities, the statutory damages Plaintiff seeks
 16 against the Regents under the CIPA are, *at minimum*, “partially penal [in] nature.” Because such
 17 penalties are not allowed against public entities, the Court should strike Plaintiff’s requests.

18 **D. THE COURT SHOULD ALSO STRIKE THE STATUTORY DAMAGES⁷**
PLAINTIFFS SEEK UNDER THE CMIA BECAUSE THEY ARE
SIMILARLY PUNITIVE.

20 The CMIA expressly allows for \$1,000 statutory damages under Section 56.36 *in addition*
 21 to “actual” damages. Cal. Civ. Code § 56.36(b). Under prevailing case law, such additional
 22 damages are non-compensatory and therefore punitive and barred by Cal. Gov’t Code § 818.

23 As noted, even “partially penal” damages provisions are not recoverable against public

25 ⁵ Although the petition for California Supreme Court review was granted (*M. (X.) v. S.C.*, 499 P.3d
 26 281 (Cal. 2021)), the case was subsequently dismissed.

27 ⁶ The petition for California Supreme Court review was granted in this case as well. *Los Angeles*
Unified Sch. Dist. v. S.C., 493 P.3d 195 (Cal. 2021).

28 ⁷ The Regents expressly reserves the argument that, should any “nominal damages” be allowed and
 any class be certified, the “nominal damages” may only apply once per action, not once per
 violation. This is consistent with the plain text of the statute and substantive due process.

1 entities. *See DuBois*, 5 Cal. 4th at 397-99. This is a low bar because “[n]either reason nor justice
 2 suggests that such retribution should be visited upon the shoulders of blameless or unknowing
 3 taxpayers.” *See X.M.*, 68 Cal. App. 5th at 1022. In *Dubois*, the California Supreme Court held that
 4 Section 818 prevents a plaintiff from recovering under Cal. Labor Code § 5814 even though it
 5 recognized that the statute was designed at least in part for a “protective purpose”—namely, “to
 6 encourage timely payments of compensation to injured working people”—rather than a punitive
 7 one. *Id.* at 396-99.

8 Here, Plaintiff seeks \$1,000 statutory damages under Section 56.36 of the CMIA and
 9 unspecified “statutory damages pursuant to Civil Code § 56.36(c)” for each of her three CMIA
 10 claims. *See Ex. A* at ¶¶ 154, 161, 167. The plain text, case law, and legislative history all make
 11 clear that these damages are punitive—not compensatory.

12 With respect to the \$1,000 statutory damages under Section 56.36(b), the statute allows
 13 plaintiffs to recover two types of damages: first, the statute allows plaintiffs to recover “actual”
 14 damages. Cal. Civ. Code § 56.36(b). Second, the statute allows plaintiffs to recover an additional
 15 \$1,000. *Id.* Although those statutory damages are labeled “nominal,” the statute provides that, in
 16 order to recover the additional \$1,000, “it is not necessary that the plaintiff suffered or was
 17 threatened with actual damages.” *Id.* Nominal damages thus exist “in addition to” any actual harm
 18 suffered, and so are “by definition” “[p]unitive.” *State Dep’t of Corr. v. Workmen’s Comp. App.*
 19 *Bd.*, 5 Cal. 3d 885, 891 (1971) (“Punitive damages are by definition in addition to actual damages
 20 and beyond the equivalent of harm done.”). This is further illustrated by Plaintiff seeking “nominal
 21 damages” separate from and in addition to “actual damages” for her three CMIA claims. *See Ex. A*
 22 at ¶¶ 154, 161, 167.

23 The California Court of Appeal has also described the damages available under Section
 24 56.36(b) as “*noncompensatory* nominal statutory damages,” designed to “serve as [a] penalty.”
 25 *Brown v. Mortenson*, 30 Cal. App. 5th 931, 941 (2019) (emphasis added). Even the legislative
 26 history explains that the provision was intended as a “penalt[y]” to “deter” violations. Bill Analysis,
 27 Assemb. Comm. On Judiciary at 9-10, S.B. 19, 1999-2000 Leg. Sess. (July 13, 1999) (“While the
 28 new civil penalties in the bill appropriately apply to ‘knowing and willful’ violations, the author

1 believes that lesser penalties for negligent conduct that leads to an unauthorized disclosure should
 2 also be included in order to deter those releases as well"). Citing to this legislative history, the
 3 California Court of Appeal in *Vigil v. Muir Med. Grp. IPA, Inc.*, explained the legislative history
 4 "suggests that the purpose of the penalties under [] section [56.36(b)] is deterrence, which in turn
 5 indicates that the increased penalties were intended to correspond with the increased culpability of
 6 the person or entity that discloses or uses medical information in violation of the CMIA." 84 Cal.
 7 App. 5th 197, 219-220 (2002), *review denied* (Jan. 25, 2023) (citing to S.B. 19).

8 Plaintiff also cannot recover damages under Section 56.36(c) of the CMIA, which can only
 9 be recovered by certain government officials in an action "brought in the name of the people of the
 10 State of California." *See* Cal. Civ. Code § 56.36(f); *see also* Cal. Civ. Code § 56.36(e)(1). *See also*
 11 *Vigil*, 84 Cal. App. 5th at 219 n.6 ("Subdivision (c) of section 56.36 sets forth *administrative fines*
 12 *and penalties*") (emphasis added). This damages request should also be stricken.

13 In sum, the various statutory damages Plaintiffs request under Civ. Code § 56.36(b) were
 14 intended to function, and do function, as a penalty—and so are barred. The Regents respectfully
 15 urge the Court to strike those damages requests.

16 **E. PLAINTIFF'S CLAIM FOR DAMAGES FOR ALLEGED PRIVACY
 17 VIOLATIONS UNDER CALIFORNIA'S CONSTITUTION SHOULD BE
 18 STRICKEN BECAUSE CALIFORNIA'S CONSTITUTION DOES NOT
 19 ALLOW FOR AN AWARD OF MONETARY DAMAGES.**

20 Finally, Plaintiff's claim for damages for an alleged invasion of privacy under the California
 21 Constitution fails because California's Constitution does not afford a right to money damages.
 22 California state and federal courts have held that, "[a]lthough citizens have a private cause of action
 23 against public entities for violation of the right to privacy, no case has ever held that California
 24 Constitution, article I, section 1, imposes a mandatory duty on public entities to protect a citizen's
 25 right to privacy. The constitutional mandate is simply that the government is prohibited from
 26 violating the right; if it does, an aggrieved citizen may seek an injunctive remedy in court."
 27 *Clausing v. S.F. Unified Sch. Dist.*, 221 Cal. App. 3d 1224, 1238, 271 Cal. Rptr. 72 (1990); *see also*
 28 *Blanco v. Cty. Of Kings*, 142 F.Supp.3d 986, 1001 (E.D. Cal. 2015) ("California Constitutional
 right to privacy contained in article 1, section 1 does not give rise to a cause of action for money

1 damages"); *Novel v. L.A. Cnty.*, No. 2:19-cv-01922-RGK-AGR, 2019 WL 7940676, at *7 (C.D.
 2 Cal. July 23, 2019) ("while a plaintiff can sue to stop the government from violating its right to
 3 privacy, a plaintiff may not recover monetary damages for the violation"); *Federated Univ. Police
 4 Officers' Ass'n v. The Regents of the Univ. of Cal.*, No. SACV 15-00137-JLS (RNBx), 2015 WL
 5 13273308, at *13 (C.D. Cal. July 29, 2015) (striking "Plaintiffs' request for damages to the extent
 6 that it is based on Plaintiffs' invasion of privacy claim," "because the privacy provision of the
 7 California Constitution does not afford a right to damages.").

8 Accordingly, Plaintiff's request for monetary damages for an alleged privacy violation of
 9 the California Constitution fails as a matter of law, and should be stricken.

10 **IV. CONCLUSION**

11 For the foregoing reasons, the Regents respectfully requests that the Court strike portions
 12 of Plaintiff's Complaint as set forth herein.

13 Dated: February 21, 2023

BAKER & HOSTETLER LLP

14
 15 By: /s/Teresa C. Chow
 16 TERESA C. CHOW

17 *Attorneys for Defendant*
 18 THE REGENTS OF THE UNIVERSITY OF
 19 CALIFORNIA d/b/a UCSF MEDICAL CENTER

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CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and service via transmittal of a Notice of Electronic Filing on the following:

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I further certify that a copy of the foregoing document was mailed via U.S. Mail and transmitted via e-mail to the person(s) listed below:

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JANE DOE, individually and on behalf
of all other persons similarly situated

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 21, 2023, at Los Angeles, California.

Nancy L. Brazil